

10-1-2013

State v. Nichols Appellant's Brief Dckt. 40830

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 40830
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 0000-18674
v.)	
)	
RAY MARVIN NICHOLS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE MELISSA MOODY
District Judge

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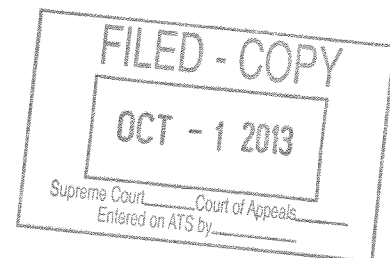


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TABLE OF AUTHORITIES

Statutes

I.C. § 18-65034

I.C. § 19-25134

STATEMENT OF THE CASE

Nature of the Case

Ray Marvin Nichols appeals from the denial of his Rule 35 motion to correct an illegal sentence. On appeal, he asserts that, mindful of Idaho Code §§ 18-6503 and 19-2513, the district court erred when it denied his motion seeking to vacate his fixed life sentence for robbery.

Statement of the Facts and Course of Proceedings

Mr. Nichols was convicted of “robbery and second degree burglary for robbing a Boise bank in January 1992.” No gun was displayed during the robbery, and the sentence was not challenged on appeal. *State v. Nichols*, 124 Idaho 653 (Ct. App. 1993). For the robbery conviction, Mr. Nichols received a fixed life sentence. (R., p.11.) In December 2012, Mr. Nichols filed a Motion to Correct an Illegal Sentence Under Idaho Criminal Court Rule 35, in which he asserted that his robbery sentence was illegal sentence because, “at the time the Court imposed the sentence upon him, [it] did not have subject matter jurisdiction to impose a sentence of life without the possibility of parole for the crime of Robbery.” (R., pp.4-5.) In support of this contention, Mr. Nichols argued,

In the State of Idaho, there are only Two [sic] crimes for which the legislature has chosen to impose such a sentence [fixed life]. One is the crime of First Degree Murder, whereas [sic] the Death Penalty has not been imposed; and the other is first degree kidnapping whereas [sic] the death penalty has not been imposed.

(R., p.8.)

Mr. Nichols argued that, by using the term “fixed life” in only two statutes, those setting forth the possible punishment for first degree murder and kidnapping,¹ the legislature indicated that it was not authorizing anything other than indeterminate life sentences in statutes for other criminal offenses providing life as the maximum possible sentence for such offenses. (R., pp.6-8 (citing, *inter alia*, I.C. § 18-4004 (providing for a sentence of “fixed life” when the death penalty is not imposed for murder in the first degree).)

In denying Mr. Nichols’ motion, the district court explained that it had “no choice but to deny this motion” because it is not illegal to impose a fixed life sentence for robbery. (Tr., p.18, Ls.11-25 (citing *State v. Story*, 109 Idaho 993 (Ct. App. 1985), *superseded on other grounds by statute as recognized in State v. Farwell*, 144 Idaho 732, 735 (2007)).)

Mr. Nichols filed a Notice of Appeal timely from the order denying his Rule 35 motion. (R., p.43.)

¹ The statute providing the punishment for kidnapping in the first degree does not actually use the term “fixed life.” Instead it provides that “[e]very person guilty of kidnapping in the first degree shall suffer death or be punished by imprisonment in the state prison for life” I.C. § 18-4504(1). Only two statutes use the term “fixed life,” both of which concern first degree murder. I.C. §§ 18-4004 and 19-2515A(4)(c).

ISSUE

Mindful of Idaho Code §§ 18-6503 and 19-2513, did the district court nonetheless err when it denied Mr. Nichols' Rule 35 motion to correct an illegal sentence?

ARGUMENT

Mindful Of Idaho Code §§ 18-6503 and 19-2513, The District Court Erred When It Denied Mr. Nichols' Rule 35 Motion To Correct An Illegal Sentence

Idaho Code § 18-6503 provides, "Robbery is punishable by imprisonment in the state prison not less than five (5) years, and the imprisonment may be extended to life."

I.C. § 18-6503. Idaho Code § 19-2513, in relevant part, provides that, when sentencing a defendant to a term of incarceration for a felony,

The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, *provided that the aggregate sentence shall not exceed the maximum provided by law.*

I.C. § 19-2513 (emphasis added).

Mindful of these statutes, which appear to allow for the imposition of a fixed life sentence for robbery, Mr. Nichols nonetheless asserts that the district court erred when it denied his Rule 35 motion to correct an illegal sentence.

CONCLUSION

Mindful of Idaho Code §§ 18-6503 and 19-2513, Mr. Nichols' respectfully requests that this Court vacate the order denying his Rule 35 motion and remand this matter with instructions that the motion be granted, with Mr. Nichols afforded a new sentencing hearing at which a fixed life sentence is not permitted to be imposed.

DATED this 1st day of October, 2013.


SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of October, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

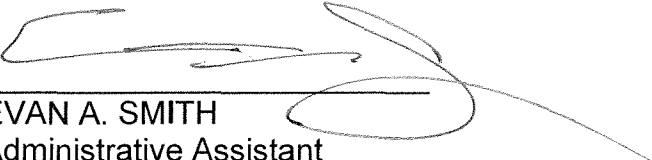
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